

**UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF NEW YORK**

• 445 Broadway; Albany, NY 12207-2936 •

John Vidurek, Gerard Aprea, et al
Plaintiffs

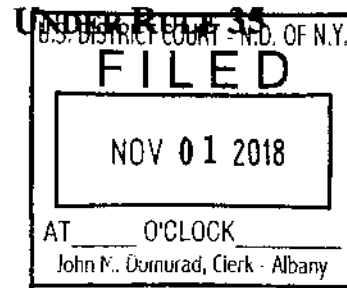
- Against -

Governor A. Cuomo, New York State Senate
and New York State Assembly
Defendants

Jurisdiction: Court of Record, under
the rules of Common Law¹

Magistrate: Christian F. Hummel
Case NO: 1:18-cv-392

**NOTICE OF MOTION
FOR PANEL DECISION**



NEW YORK STATE)
):ss.
10 DUTCHESS COUNTY)

Plaintiffs move the court for a decision by a panel of the court for reconsideration under Rule 35(b).²

On October 9, 2018 Judge Mae A. D'Agostino issued a Memorandum-Decision and Order to dismiss
15 plaintiffs' Action at Law pursuant to Rule 12 b (6), in error. Plaintiffs respond to that order point by
point as follows:

The general rule is that a complaint should not be dismissed unless it "appears beyond doubt" that the
plaintiff can prove "no set of facts" in support of his claim,³ which is not the case in this Action. "Even
if the wrongdoer has not demanded such relief in his pleadings, every final judgment shall grant the

¹ "A Court of Record is a judicial tribunal having attributes and exercising functions independently of the person of the magistrate designated generally to hold it, and proceeding according to the course of common law, its acts and proceedings being enrolled for a perpetual memorial." Jones v. Jones, 188 Mo.App. 220, 175 S.W. 227, 229; Ex parte Gladhill, 8 Metc. Mass., 171, per Shaw, C.J. See, also, Ledwith v. Rosalsky, 244 N.Y. 406, 155 N.E. 688, 689.

² **Rule 35(b) Motion for Panel Decision.** A party in a case decided by a single judge may move for a decision by a panel of the Court.

³ Blacks 4th "The general rule in appraising the sufficiency of a complaint for failure to state a claim is that a complaint should not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." - CONLEY VS. GIBSON (1957), 355 U.S. 41, 45, 46, 78 S.Ct. 99, 102, 2LEd 2d 80; SEYMOUR VS. UNION NEWS COMPANY, 7 Cir., 1954, 217 F.2d 168.

20 relief to which the party in whose favor it is rendered is entitled.⁴

II. BACKGROUND: In the defendants' motion to dismiss, they argue that (1) plaintiffs' Action at Law must be dismissed because plaintiffs' are "sovereign citizen" and a Second Amendment challenge is frivolous, as the legal theory of "sovereign citizens" has no basis in law. (2) Defendants further contend that plaintiffs' claims must be dismissed due to collateral estoppel.

25 **A. STANDARD OF REVIEW:** Defendants made a motion to dismiss for failure to state a claim pursuant to Rule 12(b)(6) to test the legal sufficiency of the plaintiffs' claim for relief. Defendants assert that the presumption of truth does not extend to legal conclusions and that the pleading's claim that the defendants acted unlawfully are not plausible and therefore cannot raise a claim of entitlement to relief and therefore must be dismissed.

30 **PLAINTIFFS REBUTTAL A:** The defendants' claim that plaintiffs' Action at Law lacks legal sufficiency (frivolous) and plausibility, which is an opinion that can only be discovered via examination after the defendants answer and the facts and positions of both parties can be examined by the tribunal. A plausible claim is defined as reasonable, valid, and truthful and what is more reasonable and valid than the plaintiffs' trust and expectation of its Republican form of government's obedience to the Supreme
35 Law of the Land, see Article VI clause 2 "*anything in the Constitution or laws of any State to the contrary notwithstanding*"; whereas defendants breached that trust. Plaintiffs' expectations of defendants' obedience are secured by the Constitution and its cap stone Bill of [unalienable] Rights. Plaintiff's verified pleading uncovered these facts concerning the aforesaid breach of that trust by the defendants, who took an oath!

40 By standard definition, our claims/defenses are only frivolous if they do not controvert material points of the opposing pleading and are not provable to be true. It's not frivolous because the court has never

⁴ Every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings." U.S. V. WHITE COUNTY BRIDGE COMMISSION (1960), 2 Fr Serv 2d 107, 275 F2d 529, 535.

heard it before, or is uncomfortable with it, or doesn't like it, or because the court does not want to believe it could be true.

It is Asst. A.G. McCartin's diatribe that is frivolous,⁵ it is his rants that do not controvert any material points and are interposed for the mere purpose of delaying in hope of a "status quo" ruling so that the defendants can fraudulently remain silent and avoid their duty to speak.

"Silence can only be equated with fraud where there is a legal or moral duty to speak, or where an inquiry left unanswered would be intentionally misleading." U.S. v Tweel, 550 F.2d 297, 299.; Also U.S. v Prudden, 424 F.2d 1021, 1032; Carmine v Bowen, 64 A.932.

To interpret a rule (which is not law) so that it would deny plaintiffs' unalienable right of redress of grievances protected by the First Amendment, would be repugnant, not only to the Constitution, but to the courts own rules likewise, because it abridges numerous substantive rights.

Title 28, USC §2072(b) "*rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.*"

(1) It abrogates plaintiffs' right of redress where we read:

Amendment I - "*Congress shall make no law respecting the right of the people to petition the Government for a redress of grievances.*"

(2) It abrogates plaintiffs' right of due process where we read:

"Law in its regular course of administration through courts of justice is due process." Leeper vs. Texas, 139, U.S. 462, 11 SUP CT. 577, 35 L ED 225.

"...no man shall be deprived of his property [or liberty] without being heard in his own defense." Kinney V. Beverly, 2 Hen. & M(VA) 381, 336.

Amendment V - "*No person shall be deprived of liberty without due process of law.*"

Using Rule 12 to deny the plaintiffs' unalienable right of redress and due process adds insult to injury considering the fact that this case against the defendants is about denial of unalienable rights.

⁵ **FRIVOLOUS:** An answer is "frivolous" where it appears from bare inspection to be lacking in legal sufficiency, and, where in any view of the facts pleaded, it does not present a defense. Neefus v. Neefus, 209 Minn. 495, 296 N.W. 579, 581. Any pleading is called "frivolous" when it is clearly insufficient on its face, and does not controvert the material points of the opposite pleading, and is presumably interposed for mere purposes of delay or to embarrass the opponent. Erwin v. Lowery, 64 N.C. 321; Strong v. Sproul, 53 N.Y. 499; Gray v. Gidiere, 4 Strob., S.C., 442; In re Beam, 93 N.J.Eq. 593, 117 A. 613, 614; Milberg v. Keuthe, 98 N.J.L. 779, 121 A. 713, 714.

Government will be imperiled if it fails to observe the law scrupulously. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself...⁶ What

75 could be more significant to a Court of Justice than obedience to that Law by our hired servants?

For the defendants to claim that the plaintiffs' "Action at Law" lacks legal sufficiency, while the defendants' unlawful actions strike at the very heart of what is lawful, their actions become the epitome of lawlessness. For by those actions, the defendants "deny" the sovereignty of the People and the real Law that We the People "Ordained and Established,"⁷ which they took an oath to support and
80 obey. This is the root of the problem and the purpose of this case and to claim that this case lacks plausibility is a denial of reality in favor of fiction⁸ as the defendants continue to hold repugnant statutes above the Law of the land and refuse the lawful plaintiffs' rightful redress of grievances.

"Congress shall make no law respecting ... or abridging the right of the people to petition the Government for a redress of grievances." - Amendment I

85

The lawless defendants deny and blatantly refuse to answer the plaintiffs, while having a duty to speak but in its stead remain silent,⁹ thereby defrauding the plaintiffs.

The defendants are lawless stewards acting under color of law beyond their authority. The People defined and vested defendants with legislating authorities, only to be lulled asleep while the defendants
90 expanded their power and authority only to be used against us. With the draining of the swamp the time is ripe that we wake up and hold them accountable and require obedience to the Law. Defendants

⁶ "Decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously". [...Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example...] Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto him self; it invites anarchy. To declare that, in the administration of the criminal law, the end justifies the means -- to declare that the Government may commit crimes in order to secure the conviction of a private criminal -- would bring terrible retribution. Against that pernicious doctrine this Court should resolutely set its face" - *Olmstead v. United States*, 277 U.S. 438 (1928).

⁷ We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America. - Preamble.

⁸ **FICTION OF LAW:** Something known to be false is assumed to be true. *Ryan v. Motor Credit Co.*, 130 N.J.Eq. 531, 23 A.2d 607, 621.; that statutes which would deprive a citizen of the rights of person or property without a regular trial, according to the course and usage of common law, would not be the law of the land. *Hoke vs. Henderson*, 15, N.C.15,25 AM Dec 677.; A rule of law which assumes as true, and will not allow to be disproved, something which is false, but not impossible. *Best, Ev.* 419.

⁹ "Silence can only be equated with fraud where there is a legal or moral duty to speak, or where an inquiry left unanswered would be intentionally misleading." *U.S. v Tweel*, 550 F.2d 297, 299. See also *U.S. v Prudden*, 424 F.2d 1021, 1032; *Carmine v Bowen*, 64 A.932.

should be ashamed of themselves that they so betrayed the People for the sake of power and filthy lucre.

B. SOVEREIGN CITIZEN ALLEGATIONS: Judge Mae A. D'Agostino holds the defendants' position that

95 any legal challenge along such lines [Sovereign Citizen] would be completely meritless. Rather, Plaintiffs' claims are strictly based upon a "sovereign citizen" legal theory.

PLAINTIFFS REBUTTAL B: Plaintiffs strongly denied under oath and continue to deny that plaintiffs hold such a theory. How can Judge Mae A. D'Agostino know what the plaintiffs are thinking and believing until we are heard? And how can the plaintiffs be heard if there are no pleadings? Judge Mae
100 A. D'Agostino here reveals prejudice and must recuse herself. A constitutional provision that right and justice shall be administered is mandatory upon the departments of government. Hence, it requires that a cause shall not be heard before a prejudicial court.

Plaintiffs believe that the fifty-six (56) USC Titles are as much the Law of the Land as the Bill of Rights and that each Title operates within its proper jurisdiction and must be obeyed. Plaintiffs
105 acknowledge that Congress was empowered under Article I Section 8, Clause 18, to make all laws which shall be necessary and proper for carrying into execution the foregoing [17] powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof. Therefore, statutes are legislated law and when enacted are called positive law, but, "when a statute is passed in violation of the Constitution, it is the prerogative of courts to declare it
110 void, or, in other words, to declare it not to be law."¹⁰ Therefore, "an unconstitutional statute is not a law."¹¹ Wherefore, how can a court agree or disagree if it prejudicially turns a deaf ear?

In contrast to the plaintiffs' status of this action, the Second Circuit has described "sovereign citizens" as a loosely affiliated group who believe that the state and federal governments lack constitutional

¹⁰ Burrill.

¹¹ John F. Jelke Co. v Hill, 208 Wis. 650, 242 N.W. 576, 581; Floumoy v. First Nat. Bank of Shreveport, 197 La. 1067, 3 So.2d 244, 248.

legitimacy. Other courts have found claims brought under a "sovereign citizen" belief system to be
115 without merit, frivolous, and without validity in American law.

Asst. A.G. McCartin, in his ten (10) page motion to dismiss, used the phrase "sovereign citizen"
fourteen (14) times. Once on page 2, twice on page 3, once on page 5, once on page 7, five times on
page 5, and four times on page 9, whereas the plaintiffs have not used said phrase anywhere in their
papers or anywhere else. Nor have plaintiffs held that the state and federal governments lack
120 constitutional legitimacy. Plaintiff John Vidurek, who is a Law abiding individual, an advocate of
constitutional government, and a Vietnam Veteran, thereby, a patriot of our Republican form of
government and its laws, has been visited by federal agents three times, over the years, after filing
(three separate) cases in the courts, including this one. Plaintiffs believe the federal judges sent them.
The first question these federal agents asked was, "Are you a sovereign citizen?" My answer was
125 always no, and I always complied with them completely just as any other "Law abiding" person would
and they always left seemingly satisfied, stating that their inquiry concerning me warranted no further
investigation. I guess they listened before they judged!

Asst. A.G. McCartin knows that the plaintiffs are not "sovereign citizens" as he has defined, for it
would be impossible to research the plaintiffs without seeing that their positions are not "anti-
130 government", not "anti-statute", and not "anti-law." Even our papers in this Action prove the same.

Asst. A.G. McCartin and "every law enforcement agent knows that the phrase "sovereign citizen" is
code for "Cop Killer." And, by Asst. A.G. McCartin's juvenile, redundant, and purposeful statements,
has placed all plaintiffs in danger of being accidentally abused, seriously injured or even killed by an
overanxious or overzealous officer, agent, or marshal.

135 We have watched and have heard of cases where individuals were labeled "sovereign citizens" and
when entering the court were surrounded and intimidated by "numerous" court officers. I recall one
time in a case in Greene County N.Y. where the courthouse entrances, street, and halls were heavily

guarded and patrolled with full gear. When we inquired of one of the clerks, we were told that they were preparing for potential violence by a radical group, and not long after that statement we found out they were talking about us.

C. MISSING:

D. COLLATERAL ESTOPPEL: Defendants claim that this case was already “heard”, that the issue is “identical” to the issue in the previous proceeding; and the issue has been “decided” in the previous proceeding. Although plaintiffs, via sworn statements, corrected the defendants’ aforesaid claims, Judge Mae A. D’Agostino advanced the false narrative in her decision stating: “*This action “came to trial” or “hearing” before the court. The issues have been “tried” or “heard” and a decision has been rendered.*”

PLAINTIFFS REBUTTAL D: Asst. A.G. McCartin falsely claims that the plaintiffs litigated and lost a similar case in New York State Supreme Court in 2013 and therefore, must be dismissed based upon the doctrine of collateral estoppel. This is erroneous on many levels. **First**, all the cases the defendant used to defend the doctrine of collateral estoppel shared one common chord that supports the plaintiffs position in that it requires “a full and fair opportunity to litigate a valid and final judgment on the merits the issue sought to be precluded from re-litigation must have been necessarily determined in the prior proceeding” and, since such a determination was not met, there is no estoppel. **Second**, the case was not dismissed with prejudice. **Third**, similar and identical are not the same things and are therefore different. **Fourth**, a few plaintiffs are the same, therefore, “not all the same.” And, **Fifth**, plaintiffs realized, after being dismissed, that the state court did not have subject matter jurisdiction and that only the federal court had subject matter jurisdiction, see Article III Section 2.¹² Nevertheless, the case was

¹² Article III JUDICIAL POWER Section 2: The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority.

thrown-out, by the defendants' motion, for failing to state a claim, and therefore, was never heard.

160 Déjà vu?

It is the defendants' "motion to dismiss", that "should be dismissed" for failure to state a claim upon which relief (dismissal) can be granted. Defendants cherry picked statements from plaintiffs' action and inserted their own private distorted interpretation, whereas; plaintiffs were careful to express their meaning precisely supported by facts, law and connotations in both the footnotes and body of the pleading.

One example in point, defendants fabricated a theme, ranting and raving in their motion, that plaintiffs' were "sovereign citizens" a/k/a "cop killers," presumably because plaintiffs identified themselves to be "sovereign," a fact that President Trump recently made clear in his address to the United Nations on Sep 19, 2017, saying:

170 *"In America, the people govern, the people rule, and the people are sovereign. I was elected not to take power, but to give power to the American people, where it belongs; If the righteous many, do not confront the wicked few, then evil will triumph."*— **President Trump**

And, a fact that our founding fathers in the Antifederalist paper No. 47 stated:

175 *"A republican, or free government, can only exist where the body of the people are virtuous, and where property is pretty equally divided. In such a government the people are the sovereign and their sense or opinion is the criterion of every public measure. For when this ceases to be the case, the nature of the government is changed, and an aristocracy, monarchy or despotism will rise on its ruin. The highest responsibility is to be attained in a simple*
180 *structure of government, for the great body of the people never steadily attend to the operations of government, and for want of due information are liable to be imposed [up]on."*

And, in fact, New York Law acknowledges that the People are sovereign.

185 Supreme sovereignty in the people – No authority can, on any pretense whatsoever, be exercised over the citizens of this state, but such as is or shall be derived from and granted by the people of this state. – N.Y.CVR. LAW §2: NY Code - Section 2.

And, in fact, State courts, including NY, acknowledge that the People are sovereign.

190 *"The people of this State, as the successors of its former sovereign, are entitled to all the rights which formerly belonged to the King by his prerogative."* Lansing v. Smith, 4 Wend. 9

(N.Y.) (1829), 21 Am. Dec. 89 10C Const. Law Sec. 298; 18 C Em.Dom. Sec. 3, 228; 37 C Nav.Wat. Sec. 219; Nuls Sec. 167; 48 C Wharves Sec. 3, 7.

195 *"The state cannot diminish rights of the people."* – Hurtado v. People of the State of California, 110 U.S. 516.

And, in fact, the US Supreme Court acknowledges that the People are sovereign.

200 *"'Sovereignty' means that the decree of sovereign makes law, and foreign courts cannot condemn influences persuading sovereign to make the decree."* – Moscow Fire Ins. Co. of Moscow, Russia v. Bank of New York & Trust Co., 294 N.Y.S. 648, 662, 161 Misc. 903.

"The very meaning of 'sovereignty' is that the decree of the sovereign makes law." – American Banana Co. v. United Fruit Co., 29 S.Ct. 511, 513, 213 U.S. 347, 53 L.Ed. 826, 19 Ann.Cas. 1047.

205 *"Sovereignty itself is, of course, not subject to law, for it is the author and source of law; but in our system, while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts And the law is the definition and limitation of power..."* – Yick Wo v. Hopkins, 118 US 356, 370

210 And, in fact, only a "sovereign" People can ordain and establish a Constitution.¹³

"We the people of the United States ... do ordain and establish this Constitution for the United States of America." – Preamble, US Constitution

215 **SELF-EVIDENT TRUTH:** It is by the following ten (X) self-evident documented truths, well-founded by our founding fathers, that seem to frighten our servants so greatly that they find it necessary to label the plaintiffs "cop killers", "terrorists" and deny the plaintiffs' unalienable right to be heard, via rule 12. They need to ask themselves, why? Why are they so afraid to answer our demand for redress of grievances?¹⁴ Why are they so frightened to allow the plaintiffs to be heard? Why are they so frightened that they conceal¹⁵ our free "Courts of Justice under Natural Law," and sell their
220 unlawful civil courts to the People? It is not the plaintiffs that deny the law. It is the defendants that deny the law.

¹³ "We the people of the United States ... do ordain and establish this Constitution for the United States of America." – Preamble, US Constitution

¹⁴ Amendment I – Congress shall make no law prohibiting the right of the people to petition the Government for a redress of grievances.

¹⁵ 18 U.S. Code § 1519: Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.

I-LAW The definition of Law is that which is laid down, ordained, or established. It is "a rule or method according to which phenomena or actions co-exist or follow each other and must be obeyed or be subject to sanctions or legal consequences."¹⁶ In our Republic, Natural Law a/k/a Common Law is the Law of the Land by which We the People, by the blessings and mercy of God, chose to be judged by our peers and not as in Babylon by our servants via legislated law. No judge or act of congress can alter that which We the People ordained; to alter is high treason.

In Natural Law, *"the general rule is that an unconstitutional statute, though having the form and name of law, is in reality no law, but is wholly void and ineffective for any purpose, since its unconstitutionality dates from the time of its enactment... In legal contemplation, it is as inoperative as if it had never been passed... Since an unconstitutional law is void, the general principles follow that it imposes no duties, confers no right, creates no office, bestows no power or authority on anyone, affords no protection and justifies no acts performed under it... A void act cannot be legally consistent with a valid one. An unconstitutional law cannot operate to supersede any existing law. Indeed insofar as a statute runs counter to the fundamental law of the land, (the Constitution) it is superseded thereby. No one is bound to obey an unconstitutional law and no courts are bound to enforce it."*¹⁷

II - THE SOVEREIGN: Natures God¹⁸ is the Sovereign Governor of the universe, the creator of all things, whose jurisdiction is eternal. even the very souls of man.¹⁹ In the beginning, He vested man with authority over His creation and commanded that he subdue.²⁰

¹⁶ Koenig v. Flynn, 258 N.Y. 292, 179 N. E. 705.

¹⁷ Bonnett v. Vallier, 116 N.W. 885, 136 Wis. 193 (1908); NORTON v. SHELBY COUNTY, 118 U.S. 425 (1886).

¹⁸ **Declaration of Independence:** People assumed among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them.

¹⁹ **Isa 45:5-12** "I am the LORD, and there is none else, there is no God beside me: I girded thee, though thou hast not known me: That they may know from the rising of the sun, and from the west, that there is none beside me. I am the LORD, and there is none else. I form the light, and create darkness: I make peace, and create evil: I the LORD do all these things. Drop down, ye heavens, from above, and let the skies pour down righteousness: let the earth open, and let them bring forth salvation, and let righteousness spring up together; I the LORD have created it. Woe unto him that striveth with his Maker! Let the potsherd strive with the potsherd of the earth. Shall the clay say to him that fashioneth it, What makest thou? or thy work, He hath no hands? Woe unto him that saith unto his father, What begetteth thou? or to the woman, What hast thou brought forth? Thus saith the LORD, the Holy One of Israel, and his Maker, Ask me of things to

III – THE COVENANT: In 1776, We the People, via America's foundational document, the Declaration of Independence, covenanted with Nature's God, acknowledging His jurisdiction and laws and thereby received His blessings of Liberty being "freedom from all law but His."²¹

245 *"But whoso looketh into the perfect law of liberty, and continueth therein, he being not a forgetful hearer, but a doer of the work, this man shall be blessed in his deed."* James 1:25

IV – THE AUTHORITY: In 1789, We the People, by the aforesaid authority vested in us by God, ordained and established the Constitution 'for' the United States of America, which is the 'Law of the Land,'²² in order to (1) form a more perfect union, (2) establish justice, (3) insure domestic tranquility, (4) provide for the common defense, (5) promote the general welfare, and (6) secure the blessings of liberty.²³

255 **V – THE AUTHOR OF LAW:** In America, We the People vested by God are sovereign and the author and source of the Law of the Land. "Sovereignty means that the decree of sovereign makes law, and foreign courts, a/k/a statutory courts cannot condemn, influence or persuade the sovereign to make the decree."²⁴ "The people of this State, as the successors of its former sovereign, are entitled to all the rights which formerly belonged to the King by his prerogative."²⁵ And, "the state

come concerning my sons, and concerning the work of my hands command ye me. I have made the earth, and created man upon it: I, even my hands, have stretched out the heavens, and all their host have I commanded."

²⁰ **Genesis 1:26-31** "Let us make man in our image, after our likeness: and let them have dominion over the fish of the sea, and over the fowl of the air, and over the cattle, and over all the earth, and over every creeping thing that creepeth upon the earth. So God created man in his own image, in the image of God created he him; male and female created he them. And God blessed them, and God said unto them, Be fruitful, and multiply, and replenish the earth, and subdue it: and have dominion over the fish of the sea, and over the fowl of the air, and over every living thing that moveth upon the earth. And God said, Behold, I have given you every herb bearing seed, which is upon the face of all the earth, and every tree, in the which is the fruit of a tree yielding seed; to you it shall be for meat. And to every beast of the earth, and to every fowl of the air, and to everything that creepeth upon the earth, wherein there is life, I have given every green herb for meat: and it was so. And God saw everything that he had made, and, behold, it was very good."

²¹ **Declaration of Independence:** We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.—That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed.

²² **Article VI clause 2:** This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

²³ **Constitution – Preamble:** "We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America."

²⁴ *Moscow Fire Ins. Co. of Moscow, Russia v. Bank of New York & Trust Co.*, 294 N.Y.S. 648, 662, 161 Misc. 903.

²⁵ *Lansing v. Smith*, 4 Wend. 9 (N.Y.) (1829), 21 Am. Dec. 89 10C Const. Law Sec. 298; 18 C Em.Dom. Sec. 3, 228; 37 C Nav.Wat. Sec. 219; Nuls Sec. 167; 48 C Wharves Sec. 3, 7.

cannot diminish the rights of the people."²⁶ "Supreme sovereignty is in the people and no authority can, on any pretense whatsoever, be exercised over the citizens of this state, but such as is or shall be derived from and granted by the people of this state."²⁷

VI - THE CONSTITUTION: We the People ordained and established the Constitution for the United States of America.²⁸ The People vested Congress with statute making powers.²⁹ The People defined and limited that power of statute making.³⁰ The People limited law making powers to them-selves alone.³¹ The People did not vest the Legislators with law making powers to control our behavior. The People decide if a law has been breached via Grand Juries. In Natural Law Courts of Justice, the People are the "judicial tribunal having attributes and exercising functions independently of the person of the magistrate designated generally to hold it, and proceeding according to the course of natural law."³² "The constitutions of most of our states assert that all power is inherent in the people; that they may exercise it by themselves, in all cases to which they think themselves competent, as in electing their functionaries executive and legislative, and deciding by a jury of themselves, both fact and law, in all cases in which any fact is involved ..."³³

²⁶ *Hurtado v. People of the State of California*, 110 U.S. 516.

²⁷ NEW YORK CODE - N.Y. CVR. LAW § 2: NY Code - Section 2.

²⁸ We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America. Preamble.

²⁹ Article I Section 1: ALL LEGISLATIVE POWERS herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

³⁰ Article I Section 8; To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

³¹ "Sovereignty itself is, of course, not subject to law, for it is the author and source of law; but in our system, while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts And the law is the definition and limitation of power..." [Yick Wo v. Hopkins, 118 US 356, 370 Quotiens dubia interpretatio libertatis est, secundum libertatem respondendum erit].

³² *Jones v. Jones*, 188 Mo.App. 220, 175 S.W. 227, 229; *Ex parte Gladhill*, 8 Metc. Mass., 171, per Shaw, C.J. See, also, *Ledwith v. Rosalsky*, 244 N.Y. 406, 155 N.E. 688, 689.

³³ Thomas Jefferson, letter to John Cartwright; June 5, 1824.

VII – THE REPUBLIC: In our Republic, it is not lawful for government to exercise power without authority and jurisdiction³⁴ to exercise that power. In law authority gives permission and control over a defined jurisdiction. In America, the People are sovereign and have authority over their created government. "The very meaning of 'sovereignty' is that the decree of the sovereign makes law."³⁵ "Sovereignty itself is, of course, not subject to legislated law, for it is the author and source of law; but in our system, while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts And the law is the definition and limitation of power."³⁶

VIII – THE GUARD: We the People through this Constitution empowered, elected and appointed servants to guard the same. The Constitution cannot be altered or abolished by the legislative servants who took an oath to protect it. *"Any judge who does not comply with his oath to the Constitution for the United States wars against that Constitution and engages in acts in violation of the supreme law of the land. The judge is engaged in acts of treason."*³⁷

IX – THE MASTERS: We the sovereign People are free and independent; we have no contract with any administrative (foreign) court. Thereby, we owe the State nothing and are under no obligation that would require the People to seek leave from any servant who has no jurisdiction or authority over We the People. We are not "subjects of the state"³⁸ but the "masters thereof."

"Stand fast therefore in the liberty wherewith Christ hath made us free, and be not entangled again with the yoke of bondage." Gal 5:1

³⁴ "Under federal Law, which is applicable to all states, the U.S. Supreme Court stated that "if a court is without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void, and form no bar to a recovery sought, even prior to a reversal in opposition to them. They constitute no justification and all persons concerned in executing such judgments or sentences are considered, in law, as trespassers." - Basso v. UPL, 495 F. 2d 906; Brook v. Yawkey, 200 F. 2d 633; Elliot v. Piersol, 1 Pet. 328, 340, 26 U.S. 328, 340 (1828).

³⁵ American Banana Co. v. United Fruit Co., 29 S.Ct. 511, 513, 213 U.S. 347, 53 L.Ed. 826, 19 Ann.Cas. 1047.

³⁶ Yick Wo v. Hopkins, 118 US 356, 370.

³⁷ Cooper v. Aaron, 358 U.S. 1, 78 S. Ct. 1401 (1958)

³⁸ "It is the public policy of this state that public agencies exist to aid in the conduct of the people's business.... The people of this state do not yield their sovereignty to the agencies which serve them. ...at the Revolution, the sovereignty devolved on the people; and they are truly the sovereigns of the country, but they are sovereigns without subjects...with none to govern but themselves..." - CHISHOLM v. GEORGIA (US) 2 Dall 419, 454, 1 L Ed 440, 455 @DALL (1793) pp471-472

X - THE SPIRIT OF LAW: Unalienable Rights being, the expression of Liberty, are the spirit of Natural Law, the Law of our Creator, and not of man. All Law is to be tried in light of our Liberty (unalienable rights). Any law repugnant to that spirit is by nature's Creator "Null and Void." To deny Natural Law is to deny the Constitution and thereby Liberty. Any servant who resists these truths "Wars against the Governor of the Universe, Wars against the Constitution³⁹ and Wars against the People."

NATURAL LAW is written in the hearts of men.⁴⁰ It is a process of maxims and common sense and is very easy to see and grasp by the common person. Whereas, BAR attorneys, who are trained in civil and criminal law founded upon Babylonian law, use statutes to construct statutory prisons to control the behavior of the masses via fines and incarceration which have no part in Natural Law and operate under USC Title 18 whose jurisdiction is maritime.⁴¹ The Lord warned us, that lawyers reject the counsel of God⁴² and that they place upon men burdens grievous to be endured while they place themselves above the burdens (repugnant law),⁴³ by controlling our courts, while they are never held accountable even to their own laws. The Lord went on to say that they take away the key of knowledge, thereby, preventing many from entering into the Realm of Truth.⁴⁴

REPUBLICS: Cuba, China, Russia and many other countries are republics under a constitution, but what makes our republic different from any other are four things. (1) We have government by consent, (2) We the People authored our Constitution and maintain our status above it, (3) in order to prevent misconstruction or abuse of its powers, We the People have a Bill of Rights by which all government

³⁹ Any judge who does not comply with his oath to the Constitution of the United States wars against that Constitution and engages in acts in violation of the supreme law of the land. The judge is engaged in acts of treason. [Cooper v. Aaron, 358 U.S. 1, 78 S. Ct. 1401 (1958)]

⁴⁰ Romans 2:14-15 *When the Gentiles, which have not the law, do by nature the things contained in the law, these, having not the law, are a law unto themselves: Which show the work of the law written in their hearts, their conscience also bearing witness, and their thoughts the mean while accusing or else excusing one another;*

⁴¹ Chapter 1 - General Provisions USC Title 18 §7 Special maritime and territorial jurisdiction of the United States defined. The term "special maritime and territorial jurisdiction of the United States", as used in this title includes...

⁴² Luke 7:30 But the Pharisees and lawyers rejected the counsel of God

⁴³ Luke 11:46 And he said, Woe unto you also, ye lawyers! for ye lade men with burdens grievous to be borne, and ye yourselves touch not the burdens with one of your fingers.

⁴⁴ Luke 11:52 Woe unto you, lawyers! for ye have taken away the key of knowledge:

310 action is judged, and most importantly (4) We are "*One Nation under God indivisible, with liberty and justice for all.*"

If the People are under the thumb of government via statutes, it is impossible to have government by consent, it is impossible to maintain our status above government, it is impossible to exercise our liberties, it is impossible to have a nation under God if government supersedes His Law and it is
315 impossible to have courts of justice if they are concealed and replaced with statutory courts.

This very case proves the aforesaid. The People are forced to "PAY" for justice in courts that are not justice but the will of the state, justice is construed by legislation, rights are limited and ignored, we are held subject to statutes and our rights are called civil or privileges and not unalienable. Government has become what our founding fathers feared!

320 Liberty requires freedom from government interference. This is America's great achievement. George Washington called the American political ideal, "*The Great Experiment.*" Contemporary English historian Paul Johnson writes, "*The creation of the United States is the greatest of all human adventures.*" And Thomas Jefferson warns us that, "*An enlightened citizenry is indispensable for the proper functioning of a republic. Self-government is not possible unless the citizens are educated*
325 *sufficiently to enable them to exercise oversight. It is therefore imperative that the nation see to it that a suitable education be provided for all its citizens... Our liberty can never be safe but in the hands of the people themselves.*"

JURISDICTION: Plaintiffs opened a court of record which is to proceed according to Natural Law; see "civil cover sheet" #440(a) unalienable rights and Statement of Jurisdiction; see Action at Law
330 lines 5-6, 11-12 and 49-56. Whereas, Magistrate Judge Christian F. Hummel refused plaintiffs a Court of Justice, under Natural Law by concealing courts of record and charging a fee, see order dated April 26, 2018, document 15 and is therefore in bad behavior⁴⁵ and must recuse himself.

⁴⁵ Article III Section 1. ...The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour...

IN CLOSING: Plaintiffs have an unalienable right to be heard, without fees,⁴⁶ in a Court of Justice under Natural Law and not civil law (statutory). Nevertheless, plaintiffs have more than met the requirements of Rule 12 and categorically deny defendants' motion to dismiss for lack of any grounds. Finally, "*Federal courts must construe prose complaints liberally, and such complaints are held to less stringent standards than those drafted by attorneys.*"⁴⁷ And, "*Every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings.*"⁴⁸

Wherefore; plaintiffs, move this panel to reinstate this case that was dismissed by Judge Mae A. D'Agostino, in error And remove Judge Mae A. D'Agostino and Magistrate Judge Christian F. Hummel from this case for bias.

SEAL

John Vidurek, et al

NOTARY

In New York State, Dutchess County, on October 30th, 2018 before me, the undersigned Notary Public, personally appeared John Vidurek, to me known to be the living man described herein, who executed the foregoing instrument, and has sworn before me that he/she executed the same as his/her free-will act and deed.

JOHN R SENCHAK
Notary Public - State of New York
NO. 01SE6350139
Qualified in Dutchess County
My Commission Expires Nov 7, 2020

Notary

⁴⁶ American Jurisprudence (Constitutional Law) §326; Free Justice and Open Courts; Remedy for All Injuries.- In most of the state Constitutions there are provisions, varying slightly in terms, which stipulate that justice shall be administered to all without delay or denial, without sale or prejudice, and that the courts shall always be open to all alike. These provisions are based largely upon the Magna Charta, chap. 40, which provides; "We will sell to no man. We will not deny to any man either justice or right." The chief purpose of the Magna Charta provision was to prohibit the King from selling justice by imposing fees on litigants through his courts and to deal a death blow to the attendant venal and disgraceful practices of a corrupt judiciary in demanding oppressive gratuities for giving or withholding decisions in pending causes. It has been appropriately said that in a free government the doors of litigation are already wide open and must constantly remain so. The extent of the constitutional provision has been regarded as broader than the original confines of Magna Charta, and such constitutional provision has been held to prohibit the selling of justice not merely by magistrates but by the State itself. Therefor a denial of access into the Peoples courts' of justice for refusing to pay a fee would be a violation of plaintiff's unalienable right of due process protected under V Amendment.

⁴⁷ Bush v. City of Philadelphia, 367 F.Supp.2d 722,725 (E.D. Pa. 2005). See also Fields v. Blake, 349 F.Supp.2d 910, 915 (E.D. Pa.2004)
⁴⁸ U.S. V. WHITE COUNTY BRIDGE COMMISSION (1960), 2 Fr Serv 2d 107, 275 F2d 529, 535.

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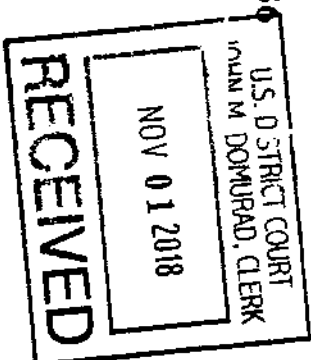
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